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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,588	09/15/2003	Sven Schreder	MERCK-2168D1	8058
23599	7590	08/29/2006	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.			SPIVACK, PHYLLIS G	
2200 CLARENDON BLVD.				
SUITE 1400			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22201			1614	

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,588

Applicant(s)

SCHREDER ET AL.

Examiner

Phyllis G. Spivack

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date 7/24/06

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The prior indication of finality is withdrawn. An Amendment filed July 24, 2006 is acknowledged. Claims 1, 3-6, 9 and 10 remain under consideration.

Another copy of Form 1449 that had been previously submitted is noted. The cited Derwent reference which clearly recites "gelatin" as a component in a pharmaceutical composition comprising thyroxine, has been obtained from the parent application.

Subsequent to the deletion of the recitation "whereby said preparation possesses improved stability versus one in which a customary binder other than gelatin is used", the rejection of record under 35 U.S.C. 112, second paragraph, is withdrawn.

In the last Office Action claim 10 remained rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds et al., U.S. Patent 3,808,332, in view of Israel, GB 1,180,574. It was asserted Reynolds teaches a combination of L-thyroxine and L-triiodothyronine that are physically admixed. No organic solvent residues are present. See column 7, lines 65-67. As required by instant claim 3, Reynolds teaches a concentration range of L-thyroxine of 100-300 mcg. Fillers such as lactose, maize starch and microcrystalline cellulose are conventional excipients. Reynolds fails to include gelatin in the combination. However, Israel teaches the inclusion of gelatin in pharmaceutical preparations comprising thyroxine. Therefore, in view of Israel's teaching the utility of gelatin as a customary excipient in preparations comprising thyroid hormones, one skilled in the art of formulation chemistry would have been motivated to prepare a pharmaceutical formulation comprising as actives, levo-thyroxine and/or liothyronine, with an excipient such as gelatin and fillers that are known in the prior art. Gelatin is known in the prior art as an emulsifying agent or a binder. Nothing unobvious is seen using gelatin as an emulsifying agent or as a binder in such a pharmaceutical preparation.

Applicants argue claim 10 is narrower than claim 1 due to the recitation "consists essentially".

Claims 1 and claim 10 are both drawn to a pharmaceutical preparation comprising an active compound. Accordingly, the claims are open to the inclusion of other agents, whether active or inactive.

The rejection of claim 10 is maintained, and presently extended to include claims 1 and 3-6 for the reasons of record. A particle size of levothyroxine between 5 μ m and 25 μ m is conventional in pharmaceutical preparations comprising levothyroxine.

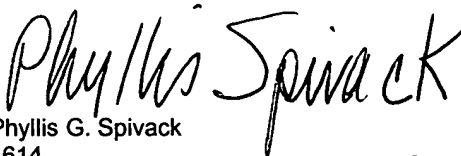
Claim 9 appears to be free of the art.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The Examiner can normally be reached from 10:30 to 7 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ardin Marschel, can be reached 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 24, 2006


Phyllis G. Spivack
1614
**PHYLLIS SPIVACK
PRIMARY EXAMINER**